

§ 1.1403

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utility pole below the usable space, including the amount required to set the depth of the pole.

(m) The term *attaching entity* includes cable system operators, telecommunications carriers, incumbent and other local exchange carriers, utilities, governmental entities and other entities with a physical attachment to the pole, duct, conduit or right of way. It does not include governmental entities with only seasonal attachments to the pole.

(n) The term *inner-duct* means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

[43 FR 36094, Aug. 15, 1978, as amended at 52 FR 31770, Aug. 24, 1987; 61 FR 43024, Aug. 20, 1996; 61 FR 45618, Aug. 29, 1996; 63 FR 12024, Mar. 12, 1998; 65 FR 31281, May 17, 2000; 66 FR 34580, June 29, 2001]

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

(a) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. Notwithstanding this obligation, a utility may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes.

(b) Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

(c) A utility shall provide a cable television system operator or tele-

communications carrier no less than 60 days written notice prior to:

(1) Removal of facilities or termination of any service to those facilities, such removal or termination arising out of a rate, term or condition of the cable television system operator's of telecommunications carrier's pole attachment agreement;

(2) Any increase in pole attachment rates; or

(3) Any modification of facilities other than routine maintenance or modification in response to emergencies.

(d) A cable television system operator or telecommunications carrier may file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.5.

(e) Cable operators must notify pole owners upon offering telecommunications services.

[61 FR 45618, Aug. 29, 1996, as amended at 63 FR 12025, Mar. 12, 1998]

EFFECTIVE DATE NOTE: At 63 FR 12025, Mar. 12, 1998, § 1.1403 was amended by revising the heading and adding new paragraph (e). The added text contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 1.1404 Complaint.

(a) The complaint shall contain the name and address of the complainant, name and address of the respondent, and shall contain a verification (in the